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TRANSCRIPT OF PROCEEDINGS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC - 6 1994

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In re applications)

FAMILY BROADCASTING, INC.)

For Construction Permit for a)
New FM Station on Channel 229A in)
Hague, New York)
-----)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
MM DOCKET NO. 94-20

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FREE STATE REPORTING, INC.
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D.C. Area (301) 261-1902
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FEDERAL COMMUNICATIONS COMMISSION

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In re Applications

FAMILY BROADCASTING, INC.

MM DOCKET NO. 94-20

For Construction Permit for a
New FM Station on Channel 229A in
Hague, New York

The above-entitled matter come on for hearing
pursuant to Notice before Judge Frysiak, Administrative Law
Judge, at 2000 L Street, N.W., Suite 201, Courtroom Four,
Washington, D.C. 20554, in Courtroom No. 4, on Wednesday
November 2, 1994 at 10:00 a.m.

APPEARANCES:

On behalf of Mass Media:

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Washington, D.C. 20554

On behalf of Family Broadcasting, Inc.:

JOSEPH C. DUNNE, III, Esquire
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P R O C E E D I N G S

(10:00 a.m.)

JUDGE FRYSIK: All right, this is a hearing regarding Family Broadcasting, Inc. for Hague, New York. May we note your appearances for the record?

MR. DUNNE: Thank you, Your Honor, Joseph E. Dunne, III for Family Broadcasting, Inc.

MR. ZAUNER: Robert A. Zauner for the Chief Mass Media Bureau.

JUDGE FRYSIK: All right, thank you. Are there preliminary matters?

MR. DUNNE: Your Honor, there was an opposition to a witness notification filed last Thursday, I haven't heard that you ruled on that yet.

MR. ZAUNER: That is correct.

JUDGE FRYSIK: You want to address that now, Mr. Zauner, you haven't filed a reply.

MR. ZAUNER: Yes, Your Honor, the Bureau's position is relatively simple, the dispute concerns one Nicholas Westbrook who is, I think, an important witness in this proceeding. It is he who had the telephone conversation with Mr. McEwing which is the subject of this proceeding. Mr. Westbrook resides in the Fort Ticonderoga area of New York state.

JUDGE FRYSIK: Well, I'm familiar with the

1 background pleading --

2 MR. ZAUNER: Okay.

3 JUDGE FRYSIK: -- but Mr. Dunne's argument is is
4 that he has no control over Mr. Westbrook, how do you respond
5 to that?

6 MR. ZAUNER: Well, Your Honor, all he need do is get
7 a subpoena signed by Your Honor requiring Mr. Westbrook to
8 come here and testify on a particular date at a particular
9 time and that answers that question, I think.

10 JUDGE FRYSIK: But that would require some expense.

11 MR. ZAUNER: It also requires some expense, that's
12 correct, but it is Family Broadcasting that has the burden of
13 proceeding and the burden of proof in this case and in order
14 to meet their burden of proceeding and proof in this case,
15 it's necessary for them to present those witnesses which will
16 permit Your Honor to resolve the issue and we believe that
17 Nicholas Westbrook is a necessary witness to the resolution of
18 that issue. Also, Your Honor, there is one other fact, the
19 Bureau has obtained and prepared a declaration by
20 Mr. Nicholas Westbrook which goes to the matters at issue in
21 this proceeding. The Bureau has provided a copy of this
22 declaration to Family Broadcasting's attorney for his review
23 and it was the Bureau's position that we would be willing to
24 offer the declaration in lieu of the live testimony of
25 Mr. Westbrook. I have been informed by Family's counsel that

1 they would object to that procedure.

2 JUDGE FRYSIAK: Well, admittedly Mr. Westbrook is an
3 adverse witness, what is your basis for requiring an applicant
4 to submit an adverse witness at his own expense in his own
5 application?

6 MR. ZAUNER: Exactly what I said, Your Honor, that
7 the applicant has the burden of proof, the burden of proving
8 the issues in this case and has to present all of the evidence
9 that is necessary to meet that burden and the testimony of
10 Mr. Westbrook is an essential ingredient to the determination
11 of that issue.

12 JUDGE FRYSIAK: Well, how do you make that -- yeah,
13 how do you make that determination, you know?

14 MR. ZAUNER: Well, this is an applicant for a new
15 broadcast facility and the applicant for a new broadcast
16 facility has to show to the Commission that he's financially
17 qualified, that he's technically qualified and that he has the
18 character -- requisite character to be a Commission licensee
19 and Mr. Westbrook's testimony is essential to that last
20 element.

21 JUDGE FRYSIAK: Mr. Dunne, what's your response?

22 MR. DUNNE: Your Honor, I think our points are
23 fairly well stated in our opposition. Number one, this is an
24 adverse witness. Number two, this is an immense expense for
25 us to bring this guy down here and subpoena him. Number

1 three, you're asking us to inflame an adverse witness by
2 subpoenaing him and dragging him down here and number four, we
3 have satisfied our burden of proof by bringing, you know,
4 witnesses that will testify as to Mr. McEwing's version of
5 the --

6 JUDGE FRYSIK: Are you willing to concede that if
7 Mr. Westbrook were to appear, he would state in fact as
8 indicated in the hearing designation order that he claims that
9 there is no basis whatsoever for Family's representation of
10 reasonable assurance of site availability?

11 MR. DUNNE: That's what he said, Your Honor, I can't
12 gainsay that here.

13 JUDGE FRYSIK: Do you realize that the onus then on
14 you is to rebut that?

15 MR. DUNNE: Yes, sir, I do, Your Honor, and I would
16 submit that that may be rebutted by Mr. McEwing's testimony if
17 it is believed.

18 JUDGE FRYSIK: All right --

19 MR. DUNNE: Plus the other witnesses we've offered.

20 JUDGE FRYSIK: Okay, with -- after due
21 consideration, I will sustain the opposition to the Bureau's
22 request requiring Mr. Westbrook to be present at Family's
23 expense.

24 MR. ZAUNER: Your Honor, in light of that ruling, if
25 I may, I would like to have marked for identification copies

1 of the declaration of Mr. Westbrook that I was prepared to
2 offer so that it may go along as an offer of proof with the
3 record in this proceeding.

4 JUDGE FRYSIAK: Yeah, you're a little bit ahead of
5 me.

6 MR. ZAUNER: Okay, if you want to do that later,
7 fine.

8 JUDGE FRYSIAK: All right, are there any other
9 preliminary matters?

10 MR. DUNNE: Your Honor, I would just note for your
11 and Mr. Zauner's note, yesterday Family filed for a petition
12 for leave to an amendment specifying a new antenna site. That
13 was hand-delivered yesterday, I don't know if either one of
14 you saw that on your desk this morning.

15 MR. ZAUNER: Your Honor, I had a chance to read that
16 this morning before coming here and as I understand that
17 petition from a quick read it's really contingent upon the
18 outcome of this proceeding and in the petition Mr. Dunne
19 recognizes that it may be premature and I'm wondering whether
20 in light of that Your Honor couldn't rule that comments on the
21 petition for leave to amend would be included in the proposed
22 findings and conclusions that we offer.

23 JUDGE FRYSIAK: Sounds reasonable.

24 MR. DUNNE: That's -- I think is entirely an
25 appropriate procedure, Your Honor.

1 JUDGE FRYSIK: All right, we'll leave it at that,
2 anything else? All right, if not, then we'll begin with our
3 testimony, Mr. Dunne.

4 MR. DUNNE: Thank you, Your Honor. Your Honor, I
5 would note that Family has exchanged and will introduce into
6 evidence six different exhibits which I will describe for the
7 record and then hand the one copy in -- or an original and two
8 copies to the court reporter. The exhibits that we offer are
9 Exhibit No. 1, testimony of Alexander D. McEwing consisting of
10 5 pages with a supporting declaration and two different
11 attachments, Attachment A and Attachment B, and Your Honor,
12 what I would do is I would suggest that I just read all
13 6 exhibits then you mark and identify them at the end, sir.

14 JUDGE FRYSIK: Yes, agreeable.

15 MR. DUNNE: Exhibit No. 2 is entitled the testimony
16 of Peter S. -- of Peter Morton and consists of 4 pages of
17 testimony, a supporting declaration and one attachment,
18 Attachment A.

19 JUDGE FRYSIK: Yes.

20 MR. DUNNE: A third exhibit is the testimony of
21 Gary S. Savoie, that's S-A-V-O-I-E, consists of 3 pages --
22 excuse me, 4 pages and a supporting declaration.

23 JUDGE FRYSIK: Yes.

24 MR. DUNNE: Exhibit No. 4 is the testimony of
25 Robert G. Short, consists of 2 pages and a supporting

1 declaration.

2 JUDGE FRYSIAK: Yes, that's marked.

3 MR. DUNNE: Testimony of -- excuse me, Exhibit No. 5
4 is the testimony of George A. Schiavone, that's
5 S-C-H-I-A-V-O-N-E, consisting of two pages with a supporting
6 declaration. Exhibit No. 6 is the testimony of Scott Gifford
7 Slocum, consisting of 2 pages with a supporting declaration.

8 JUDGE FRYSIAK: Yes, you can mark it.

9 MR. DUNNE: Okay, and Your Honor, we also have two
10 separate exhibits that we're calling Exhibit No. 7 and 8 for
11 ease of reference and they consist of two documents submitted
12 by Mr. Westbrook to the FCC of which we're asking you to take
13 official notice and would be Exhibit No. 7, consisting of a
14 letter from Mr. Westbrook to Dennis Williams dated 15 January
15 1992, consisting of 2 pages and Exhibit No. 8, a letter from
16 Nicholas Westbrook to Donna Searcy with -- consisting of four
17 different pages.

18 JUDGE FRYSIAK: Yes, being marked.

19 (Whereupon, the documents referred to as
20 Family Broadcasting, Inc. Exhibit Nos. 1
21 through 8 were marked for identification.)

22 MR. DUNNE: Let the record reflect, Your Honor, I'm
23 presenting an original and two copies to the court reporter.

24 JUDGE FRYSIAK: Okay.

25 MR. DUNNE: And Family, at this time, would move the

1 admission of what has been marked and identified as Family
2 Exhibits 1 through 8 in the record in this proceeding.

3 JUDGE FRYSIK: Mr. Zauner, have you any objections
4 to these exhibits?

5 MR. ZAUNER: Yes, Your Honor -- well, Your Honor, I
6 have some objections -- questions of the exhibits.

7 JUDGE FRYSIK: All right, can we take them one at
8 time. All right, how about 1?

9 MR. ZAUNER: Okay, Your Honor, first, just a very
10 small point and I think on page 1 in paragraph 2, the next to
11 last line, I believe that "every" should be just "ever", is
12 that correct, it's just a typo, it looks like.

13 JUDGE FRYSIK: I -- where is it again?

14 MR. ZAUNER: It says "no one has every questioned."

15 JUDGE FRYSIK: All right.

16 MR. ZAUNER: It should be "ever questioned", is that
17 correct?

18 MR. DUNNE: That's correct, yes, that's a typo.

19 MR. ZAUNER: I presume there's no objection to that
20 change.

21 MR. DUNNE: No, certainly.

22 MR. ZAUNER: Okay.

23 JUDGE FRYSIK: I still don't get it, you want to
24 correct what, "ever"?

25 MR. ZAUNER: It should be "no one has ever

1 questioned my character", and it reads "no one has every
2 questioned my character", it could just be --

3 JUDGE FRYSIAK: Oh, I see, okay.

4 MR. DUNNE: Yeah, that's the second line from the
5 bottom of page -- paragraph 2.

6 JUDGE FRYSIAK: All right, go ahead.

7 MR. ZAUNER: Okay, on page 2, paragraph 5, I would
8 object to the material beginning with the words "I remember
9 that Gary --" and that's about half way down that paragraph 5
10 on page 2, to the bottom of the paragraph, and the basis of my
11 objection is that the only basis for this kind of information
12 would be coming in would be if there was a claim that
13 Mr. McEwing's claims concerning the conversation with
14 Mr. Westbrook were a recent fabrication. Here, there is no
15 such allegation and what he may have told somebody else about
16 the conversation at a later point in time is irrelevant to a
17 determination of the issue.

18 JUDGE FRYSIAK: But it serves at least in the nature
19 of rebuttal, does it not?

20 MR. ZAUNER: Your Honor --

21 MR. DUNNE: Rebuttal to what, Your Honor, there is
22 nothing --

23 JUDGE FRYSIAK: Well, the claim -- additional order
24 is that the -- that the statement was made by the owner of the
25 site that no reasonable assurance was given.

1 MR. ZAUNER: That's correct, and that's the dispute
2 between the owner and Mr. McEwing as to what happened in that
3 conversation but the fact that Mr. McEwing may have told
4 someone at a later point in time his version of events just as
5 he's going to be telling it to us here, is irrelevant unless
6 there's a claim that this is a recent fabrication that he was
7 engaging in and there is no such claim.

8 MR. DUNNE: Your Honor, may I respond?

9 JUDGE FRYSIK: Sure.

10 MR. DUNNE: There are two reasons for that
11 particular paragraph to be in there, Number 1, as Mr. Zauner
12 properly points out, it negates the possibility that anyone
13 can make a finding that his story presented to the Commission
14 June 1, 1993 was a recent fabrication because this is a
15 consistent account, the -- to -- essentially was told to
16 someone else in September of 1991, and secondly, it is
17 contemporaneous, this conversation was contemporaneous with
18 the conversation that he had with Mr. Westbrook. If you look
19 at the exhibit, the sequence of events is Mr. McEwing spoke
20 with Mr. Westbrook and immediately called Mr. Savoie. Now,
21 this is a conversation that took place literally, he put down
22 the phone, picked it up again and called Mr. Savoie and it
23 also shows that he, you know, he didn't make the story up, he
24 believed the story at least of, you know, 30 seconds after he
25 called Mr. Westbrook because he told Mr. Savoie exactly the

1 same thing he told the Commission in June 1993 and I think
2 that is relevant evidence under those issues, I think it
3 supports Mr. McEwing's credibility.

4 JUDGE FRYSIK: Yeah, I think so, I -- that's what I
5 had in mind when I raised the idea of a rebuttal. Yeah, as we
6 know that a witness can make a statement adverse to his
7 interest, he can also make a statement -- a timely made
8 statement in support of his interest so this is -- I agree
9 with you, Mr. Dunne, this is a contemporaneous statement made
10 with the application.

11 MR. ZAUNER: But, Your Honor, I think the problem is
12 that it comes down to the fact that this is an attempt to show
13 that it was not a recent fabrication and there's nothing here
14 to rebut, there's been no claim that he made a recent
15 fabrication. The fact that he called Mr. Westbrook and then
16 after the telephone call, maybe he was even thinking, well,
17 this is a good chance for me to cover my tail, I will turn
18 around and recount this story as I want it to be heard through
19 my engineer and then if I get into trouble, I can come back in
20 and bring in my engineer and say, didn't I tell you this then.

21 JUDGE FRYSIK: Well, that's something for you to
22 disprove therefore by showing that there were no other sites
23 available and that they would have to -- that they were
24 motivated to make this statement in light of that thinking.
25 No, I'm going to sustain the objection, the issue objection --

1 I will overrule your objection, Mr. Zauner, to the statement
2 that you've pointed out in paragraph 5.

3 MR. ZAUNER: Your Honor, I also object to language
4 in paragraph 6 beginning with the second sentence, "I didn't
5 speak to Gary again about the application until some time
6 after I received Mr. Westbrook's November 14th letter" and
7 through the end of that paragraph. Once again, this is, as I
8 see it, manufactured evidence, it is evidence that would be
9 offered to rebut an argument or a claim that Mr. McEwing's
10 testimony was a recent fabrication and it does not go to the
11 issue which is what was discussed with Mr. Westbrook.

12 JUDGE FRYSIK: The same argument, the same ruling,
13 I'll overrule the objection.

14 MR. DUNNE: Thank you, Your Honor.

15 MR. ZAUNER: I would object also, Your Honor, to all
16 of paragraph 7 on the same grounds. Paragraph 7 concerns a
17 conversation Mr. McEwing had with Mr. Morton and states what
18 Mr. McEwing claims he told Mr. Morton in a telephone call.

19 JUDGE FRYSIK: Well, I continue to review this as
20 rebuttal testimony, statements made at the time long since
21 past without any anticipation of hearings on this matter and
22 which are -- can be supported by other individual people who
23 have no interest in this application. I'll overrule your
24 objection.

25 MR. ZAUNER: Okay, I have no other objections, Your

1 Honor.

2 MR. DUNNE: Thank you, Your Honor.

3 JUDGE FRYSIK: All right, I'll receive Exhibit 1.

4 (Whereupon, the document previously marked
5 as Family Broadcasting, Inc. Exhibit No. 1
6 was received into evidence.)

7 JUDGE FRYSIK: Exhibit 2, any objections?

8 MR. ZAUNER: Yes, Your Honor, I'm not sure whether
9 it's an objection or not --

10 MR. DUNNE: Your Honor --

11 MR. ZAUNER: -- but I think Mr. Dunne and I have
12 agreed that paragraph 6 would be deleted, is that correct,
13 Mr. Dunne?

14 MR. DUNNE: That's correct, as I believe I mentioned
15 that in the letter.

16 JUDGE FRYSIK: What about paragraph 6?

17 MR. DUNNE: That -- Mr. Zauner noticed Brian Larson
18 whose discussion is noted in that paragraph says it's for
19 cross-examination and in return for Mr. Zauner withdrawing his
20 request for cross-examination, I've agreed not to oppose his
21 objection to the striking of paragraph 6 from the testimony of
22 Mr. Morton.

23 JUDGE FRYSIK: All right, so we'll strike
24 paragraph 6, Exhibit 2, any other objections?

25 MR. ZAUNER: Yes, Your Honor, could I just have one

1 second. Consistent with my other objections, I would object
2 to the third sentence in paragraph 7 beginning with
3 "Mr. McEwing related" down to the end of that paragraph.
4 Again, this deals with conversations that were not contemporaneous --
5 with -- this deals with a matter that was -- that is not
6 directly relevant, the relevant conversation is the
7 conversation between Mr. McEwing and Mr. Westbrook.
8 Subsequent conversations that Mr. McEwing may have had with
9 other individuals concerning his conversation with
10 Mr. Westbrook would serve only again to support a recent
11 fabrication and I understand your ruling will most likely be
12 the same as it has been.

13 JUDGE FRYSIAK: All right, well, Mr. Morton will be
14 present for cross-examination.

15 MR. ZAUNER: And there's one other objection that's
16 a little different within that paragraph and that is to the
17 sentence, "the conversation he described with Mr. Westbrook
18 sounded great deal like my conversation with Westbrook". I
19 think that's conclusory, he's described his conversation with
20 Mr. Westbrook and we can draw our own conclusions as to how
21 similar the conversations were.

22 JUDGE FRYSIAK: He gives some indication, terms of
23 proposed lease, he'll be available for cross-examination, I
24 overrule your objection.

25 MR. ZAUNER: If this is coming in to describe the

1 state of mind of Mr. Morton, I would have no objection to it,
2 I just don't want it to be a, you know, a factual statement in
3 the --

4 MR. DUNNE: I think it's material and relevant
5 evidence, Your Honor, about that Nicholas Westbrook --

6 JUDGE FRYSIK: Yeah, I -- yeah, nobody tends to be
7 a mind reader but he's testifying as to what, in fact, was
8 said here.

9 MR. ZAUNER: There'll be no other objections, Your
10 Honor.

11 JUDGE FRYSIK: All right, I'll receive Exhibit 2.

12 (Whereupon, the document previously marked
13 as Family Broadcasting Exhibit No. 2 was
14 received into evidence.)

15 JUDGE FRYSIK: Any objections to 3?

16 MR. ZAUNER: Yes, Your Honor, once again I have a
17 general objection that this again -- that this exhibit relates
18 to conversations that Mr. McEwing allegedly had with
19 Mr. Savoie and after the conversations with Mr. Westbrook and
20 that this would be a recent fabrication, rebuttal exhibit but
21 there is no claim of recent fabrication. I would also object
22 in that the information in this exhibit is so vague as to be
23 useless. For example, paragraph 4, Mr. Savoie says, "I called
24 the other occupant on the tower which Family was specifying"
25 and then he discusses a conversation that he had with this

1 other person but he doesn't identify the other person, doesn't
2 seem to recall who he spoke with. There is no way that I can
3 check this kind of a statement, there is no other person I
4 could contact to ascertain whether or not this statement is
5 true and correct. It's --

6 JUDGE FRYSIK: Well, accept for the last sentence
7 which he says that the record -- telephone record indicates
8 that he did spend 15 minutes talking with someone at WANC.

9 MR. ZAUNER: If you want to leave that statement in,
10 would take out the rest, I'll be very happy to go along with
11 it but I agree that the telephone records show that he spent
12 15 minutes talking to someone but whom and what was said, we
13 only have one side's version of that conversation and there's
14 no way that I can check it

15 JUDGE FRYSIK: Well, it's true, it's hard to rebut
16 this kind of statement when you don't have a person that you
17 can rebut it with.

18 MR. DUNNE: Well, Your honor, the -- obviously, if
19 Mr. Zauner wanted to call WANC and check he could do that and
20 produce a rebuttal witness, if anyone recalls calling Mr. --
21 talking with Mr. Savoie. The fact of the matter is that it's
22 established by extrinsic evidence other than Mr. Savoie's
23 recollection that there was, in fact, a telephone call to WANC
24 and he does have a recollection of what was discussed during
25 the telephone call. He just does not remember now, 3 years

1 later, exactly whom he had the conversation with. I think
2 that the information -- he does have a distinct recollection
3 of what the conversation was, that's certainly respectable
4 evidence.

5 JUDGE FRYSIK: Yeah, well, I'm going to admit --

6 MR. DUNNE: And in cross-examination, you know,
7 Mr. Zauner, if he wish could probe, you know, the lack of
8 memory about the person with whom he spoke.

9 JUDGE FRYSIK: Yeah, I think that's a good
10 solution, I'm -- Mr. Zauner, I'm going to leave this testimony
11 in subject to strike your cross -- after your cross-
12 examination of Mr. Savoie.

13 MR. ZAUNER: May I make just one other observation
14 and that is that this issue focuses on a conversation between
15 Mr. McEwing and Mr. Westbrook. The fact that a consulting
16 engineer may have called someone at a -- who is a tenant on
17 the tower and had a conversation with that tenant and drawn
18 the conclu -- some sort of conclusion from that conversation
19 is really irrelevant and casts no light on the question of
20 whether or not Mr. McEwing received a reasonable assurance
21 from Mr. Westbrook at the time he called him some time in the
22 future -- in the past.

23 MR. DUNNE: Your Honor, may I make a --

24 JUDGE FRYSIK: -- the input of Mr. Savoie's
25 testimony that it was rather common knowledge in the

1 engineering circles that permission was granted to the
2 applicant?

3 MR. ZAUNER: I don't -- he says, I recall that the
4 person with whom I was speaking said something during the
5 conversation which indicated that he was aware that
6 Mr. McEwing had called about the site. Now, we don't know how
7 he was aware, assuming the testimony is true, assuming what he
8 says here is true. We don't know how that engineer became
9 aware, he may have become aware because Mr. McEwing may have
10 called someone who called again. He may have been aware --

11 JUDGE FRYSIK: But he was also basically -- yeah,
12 he was also told to be as accommodating as possible.

13 MR. ZAUNER: But we don't know by who.

14 JUDGE FRYSIK: Well --

15 MR. ZAUNER: Maybe it was a friend of Mr. McEwing.

16 MR. DUNNE: Again Your Honor, that's -- that's
17 subject to cross-examination

18 JUDGE FRYSIK: Yeah.

19 MR. DUNNE: But I would suggest that the fact that a
20 consulting engineer called the engineering staff that owned
21 this tower which is controlled by Mr. Westbrook, again,
22 immediately after he spoke with Mr. McEwing and already had
23 gotten the cooperative help from the engineering staff.
24 Generally when you call engineering staffs and they're told,
25 no we don't -- you don't have the right to give that

1 | information out, they're not cooperative. The fact that this
2 | -- these people were cooperative with this telephone call at
3 | least shows -- tends to show that Mr. Westbrook was not --

4 | JUDGE FRYSIK: Yeah, I said before, I'm going to
5 | leave this testimony in subject to strike pending the cross-
6 | examination of Mr. Savoie. All right, is that Mr. Savoie
7 | we're talking about?

8 | MR. DUNNE: Yes.

9 | JUDGE FRYSIK: Yes, any other objections?

10 | MR. ZAUNER: No, Your Honor.

11 | JUDGE FRYSIK: All right, I'll receive Exhibit 4 --
12 | or was it No. 3 -- No. 3

13 | MR. DUNNE: It's No. 3, right.

14 | (Whereupon, the document previously marked
15 | as Family Broadcasting Exhibit No. 3 was
16 | received into evidence.)

17 | JUDGE FRYSIK: How about 4?

18 | MR. ZAUNER: One second, Your Honor, I have no
19 | objection, Your Honor.

20 | JUDGE FRYSIK: I imagine that would be the same for
21 | the other character --

22 | MR. ZAUNER: That is correct.

23 | JUDGE FRYSIK: That'd be 4, 5 and 6?

24 | MR. ZAUNER: Yes, Your Honor.

25 | JUDGE FRYSIK: All right, I'll receive 4, 5 and 6.

1 (Whereupon, the documents previously
2 marked as Family Broadcasting, Inc.
3 Exhibit Nos. 4, 5 and 6 were received into
4 evidence.)

5 JUDGE FRYSIAK: How about 7?

6 MR. ZAUNER: I believe 7, Your Honor --

7 JUDGE FRYSIAK: I was asking -- official notice.

8 MR. ZAUNER: The Bureau would have no objection to
9 official notice.

10 JUDGE FRYSIAK: All right, the same goes for 8?

11 MR. ZAUNER: Your Honor, that would go for 8 also.

12 JUDGE FRYSIAK: All right, thank you, very much.

13 (Whereupon, the documents previously
14 marked as Family Broadcasting, Inc.
15 Exhibit Nos. 7 and 8 were received into
16 evidence.)

17 JUDGE FRYSIAK: You want to begin with testimony?

18 MR. DUNNE: Thank you, Your Honor.

19 JUDGE FRYSIAK: All right, Mr. McEwing, I take it?

20 MR. DUNNE: That's right.

21 JUDGE FRYSIAK: Before you sit down, let me take
22 your oath. Please raise your right hand. Do you swear that
23 the testimony you're about to give will be the truth, the
24 whole truth and nothing but the truth?

25 MR. MCEWING: Yes.

1 JUDGE FRYSIAK: Please have a seat and for the
2 record, state your full name and address.

3 MR. MCEWING: Alexander Douglas McEwing, I reside at
4 140 Main Street, No. 2, in Essex Junction, Vermont.

5 JUDGE FRYSIAK: All right, thank you very much.
6 Mr. Zauner, the witness is available for cross-examination.

7 MR. ZAUNER: Okay, thank you, Your Honor.
8 (Whereupon,

9 ALEXANDER D. MCEWING,
10 was called as a witness and after being duly sworn was
11 examined and testified as follows:)

12 CROSS-EXAMINATION

13 BY MR. ZAUNER:

14 Q Mr. McEwing, when did you become president of Family
15 Broadcasting, Inc.?

16 A In February of 1985.

17 Q At the same time did you become a director?

18 A Yes

19 Q And did you at that time own 39.8 percent of the
20 stock?

21 A At that point I owned a percentage of stock, it
22 wasn't 39 but it was a percentage.

23 Q Now, Family Broadcasting, Inc. is the licensee of
24 WGLY-FM in Waterbury, New York -- Waterbury, Vermont, I mean,
25 I'm sorry, is that correct

1 A Yes.

2 Q Okay, how did Family obtain that license?

3 A It was purchased in February of 1985.

4 Q And Family has owned that station continuously

5 through the present date?

6 A Yes.

7 Q Family is also the licensee of WGLV-FM in Hartford,

8 Vermont, is that correct?

9 A That's correct.

10 Q And how did Family obtain that license?

11 A Again, it was purchased.

12 Q And when was it purchased?

13 A I don't recall the exact date, I'd have to look at

14 the records but it was 19 --

15 JUDGE FRYSIAK: Stated in your exhibit, February 12,

16 1986.

17 MR. MCEWING: Yeah, that's --

18 BY MR. ZAUNER:

19 Q '86.

20 A No, not the license for WGLV, I'm sorry, that was at

21 a later -- WGLY was purchased in 1986, WGLV, the license was

22 purchased, I believe, in '91 -- '90 or '91.

23 Q And you've owned it continuously ever since.

24 A Yes.

25 Q And when did Family Broadcasting, Inc. -- or let me